

§ 604.19

The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to [the general nature of the matter involved].

- A. A full statement of all facts and legal points relevant to the request
 - B. An affirmation that the undersigned swears, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.
 - C. The following certification: "I hereby certify that I have this day served the foregoing [name of document] on the following interested party(ies) at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:
[list persons, addresses, and e-mail or facsimile numbers]"
- Dated this _____ day of _____, 20____.
[Signature]
[Printed name]
[Title of person making request]
[Mailing address]
[Telephone number]
[e-mail address]

(c) The Chief Counsel may request additional information, as necessary, from the party submitting the request for an advisory opinion.

(d) A request for an advisory opinion may be denied if:

- (1) The request contains incomplete information on which to base an informed advisory opinion;
- (2) The Chief Counsel concludes that an advisory opinion cannot reasonably be given on the matter involved;
- (3) The matter is adequately covered by a prior advisory opinion or a regulation;
- (4) The Chief Counsel otherwise concludes that an advisory opinion would not be in the public interest.

§ 604.19 Processing of advisory opinions.

(a) A request for an advisory opinion shall be sent to the Chief Counsel at *ombudsman.charterservice@dot.gov*, and filed electronically in the Charter Service Advisory Opinion/Cease and Desist Order docket number FTA-2007-0023 at *http://www.regulations.gov* or sent to the dockets office located at 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590, for submission to that docket.

49 CFR Ch. VI (10-1-15 Edition)

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with § 604.18(b). The Chief Counsel shall send his or her decision to the interested party, the docket, and the recipient, if appropriate.

§ 604.20 Effect of an advisory opinion.

(a) An advisory opinion represents the formal position of FTA on a matter, and except as provided in § 604.25 of this subpart, obligates the agency to follow it until it is amended or revoked.

(b) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement and is limited to the factual circumstances described in the request for an advisory opinion. The Chief Counsel's advisory opinion shall not be binding upon a Presiding Official conducting a proceeding under subpart I of this part.

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FTA employee orally, or given in writing, but not under this section, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

§ 604.21 Special considerations for advisory opinions.

Based on new facts involving significant financial considerations, the Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator.

§ 604.22 Request for a cease and desist order.

(a) An interested party may also request a cease and desist order as part of its request for an advisory opinion.